


Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW <i>via eFS-Web</i>		Docket Number (Optional) 4366-106							
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>April 10, 2009</u> Signature <u><i>Leslie M. Frankel</i></u> Typed or printed name <u>Leslie M. Frankel</u>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Application Number 10/673,118</td> <td style="padding: 5px;">Filed 2003-09-26</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor Andrew D. Flockhart</td> </tr> <tr> <td style="padding: 5px;">Art Unit 2195</td> <td style="padding: 5px;">Examiner WAI, ERIC CHARLES</td> </tr> </table>		Application Number 10/673,118	Filed 2003-09-26	First Named Inventor Andrew D. Flockhart		Art Unit 2195	Examiner WAI, ERIC CHARLES
Application Number 10/673,118	Filed 2003-09-26								
First Named Inventor Andrew D. Flockhart									
Art Unit 2195	Examiner WAI, ERIC CHARLES								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>									
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>44,189</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<div style="text-align: center;">  Signature Bradley M. Knepper Typed or printed name (303) 863-9700 Telephone number <u>April 10, 2009</u> Date </div>							
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.									
<input type="checkbox"/> *Total of _____ forms are submitted.									

This collection of Information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:
FLOCKHART et al.

Serial No.: 10/673,118

Filed: September 26, 2003

Atty. File No.: 4366-106

For: "METHOD AND APPARATUS FOR
LOAD BALANCING WORK ON A
NETWORK OF SERVERS BASED ON THE
PROBABILITY OF BEING SERVICED
WITHIN A SERVICE TIME GOAL"

) Group Art Unit: 2195

) Examiner: WAI, ERIC CHARLES

) Confirmation No.: 9237

) REASONS SUPPORTING PRE-APPEAL
) BRIEF REQUEST FOR REVIEW

CERTIFICATE OF TRANSMISSION
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING TRANSMITTED VIA THE OFFICE ELECTRONIC FILING SYSTEM IN ACCORDANCE WITH 37 CFR §1.6(a)(4) ON <u>April 10, 2009</u>
SHERIDAN ROSS P.C. BY: <u>Xerxi M. Frankel</u>

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The following sets forth Applicants' Reasons in Support of the Pre-Appeal Brief Request for Review submitted herewith.

The Examiner's objections omit essential elements needed to reject the pending claims. In particular, the cited references do not teach, suggest or describe a system or method in which a probability of servicing a work request within a target time is calculated for each of a plurality of service locations by calculating a number of opportunities to service the work request within the target time by each service location included in the plurality of service locations as generally claimed. Accordingly, it is submitted that all the claims are in condition for allowance.

Claims 1-3, 6-7, 13, 16, 17, 20, 21, 24-26 and 28 stand rejected as being unpatentable over 35 U.S.C. §103 over U.S. Patent No. 6,718,330 to Zenner ("Zenner") in view of U.S. Patent No. 6,687,257 to Balasubramanian ("Balasubramanian"). In addition, Claims 9-11, 14, 18, 19, 22, 23, 30, 31, 33 and 34 stand rejected over Zenner in view of Balasubramanian and further in view of Applicants' admitted prior art or U.S. Patent No. 5,506,898 to Constantini

("Constantini"). However, all of the claim elements cannot be found in the cited references, whether those references are considered alone or in combination. Accordingly, reconsideration and withdrawal of the rejections of the claims as obvious in view of the cited references are respectfully requested.

The claimed invention is generally directed to a method and system that balances resource loads for a plurality of service locations. More particularly, the claims recite the computation of a relative probability of servicing work requests for each service location included in a plurality of service locations. Work requests are then assigned to a service location based on the determined relative probabilities, allowing work to be efficiently routed. Moreover, the pending claims generally require determining a relative probability by calculating a number of opportunities to service the work request within a target time by each service location included in the plurality of service locations. There is no disclosure in any of the cited references of determining a number of opportunities to service a work request within a target time as claimed. Therefore, all of the claim elements are not disclosed by the cited references, and the claims should be allowed.

The Zenner reference is generally directed to a predictive Internet automatic work distributor and proactive Internet automatic work distributor. The predictive Internet automatic work distributor (pre-IAWD) assigns work to an agent having the highest likelihood of completing the work first in a group of agents, based on a generated prediction. (Zenner, Abstract.) The prediction algorithm used considers factors such as a current work load of each agent, a priority of the work, and an experience level and skill set of each agent. (*id.*) With respect to claim elements specifying that the relative probability is determined by calculating a number of opportunities to service a work request within a target time by each service location included in the plurality of service locations, the Office Action admits that Zenner only teaches that work is assigned to the agent having the highest likelihood of completing the work first in the group of agents. The Office Action cites to the Balasubramanian reference for its disclosure of slots in a task queue.

The Balasubramanian reference is generally directed to a distributed real time operating system providing dynamic guaranteed mixed priority scheduling for communications and processing. The system prioritizes the queuing of messages on a network according both to a message priority established by a user and the context of a task, and according to a deadline

period by which the task must be executed. (Balasubramanian, Abstract.) In addition, Balasubramanian discusses associating each processor of a system with a task queue representing a particular bandwidth or time slice of processor usage. A particular amount of processor resources is thus allocated to a task. The scheduler only allocates to a task the number of time slots in the queue as was reserved in its bandwidth allocation. (Balasubramanian, col. 12, ll. 34-60.) This portion of Balasubramanian, which was cited by the Office Action with respect to claim elements related to determining a relative probability for each service location by calculating a number of opportunities to service the work request within the target time. The allocation of bandwidth in the form of processor slots is not a teaching, suggestion or disclosure of determining a relative probability of servicing a work request within a target time by calculating a number of opportunities as explicitly recited by the claims. Accordingly, the rejections of the claims as obvious should be reconsidered and withdrawn for at least these reasons.

The deficiencies of the Zenner and Balasubramanian references with respect to claim elements reciting determining a relative probability of servicing a work request within a target time by calculating a number of opportunities are not addressed by the other cited references, the Applicants' admitted prior art and the Constantini reference. In particular, the Applicants' admitted prior art is related to the use of agents in a call center. However, there is no disclosure of determining a relative probability for a service location by calculating a number of opportunities to service a work request within the target time by the service location. The Constantini reference is cited for teaching the use of an average rate of advance in determining an estimated wait time in a queue. However, the Constantini reference also does not teach, suggest or describe determining a relative probability of servicing a work request within a target time by calculating a number of opportunities as recited by the claims. Therefore, the deficiencies in the disclosures of the Zenner and Balasubramanian references are not made up for by either the Applicants' admitted prior art or the Constantini references, and the rejections of all the claims as obvious should be reconsidered and withdrawn.

Claims 16-19 and 20-25 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. In particular, the Office Action states that Claims 16 and 20 recite an apparatus, however, the Office Action finds that the system would reasonably be interpreted by one of ordinary skill in the art as software per se. Applicants note that Claim 16 is in means plus

function form, which requires that the recited “means for” be modified by functional language (MPEP §2818). Moreover, the structure disclosed by the specification as being associated with various of the recited means includes hardware components. In addition, in interpreting a means plus function claim, “the PTO may not disregard the structure disclosed in the specification corresponding to such [means plus function] language when rendering a patentability determination.” (MPEP §2181, quoting In re Donaldson Co., 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994)). Accordingly, the rejection under 35 U.S.C. § 101 of Claims 16-19 should be reconsidered and withdrawn.

Claims 1-3 and 6-14 stand rejected as being directed to a process that does not include a physical structure and is not tied to another statutory class. However, it is noted that Claims 1-3 and 6-14 recite a plurality of service locations and determining a relative probability for each service location included in the plurality of service locations by calculating a number of opportunities to service the work request within the target time by each service location included in the plurality of service locations. Work is then assigned to a selected service location. Accordingly, the Examiner’s objection to these claims should be reconsidered and withdrawn for at least the reason that they recite a physical structure and/or are otherwise tied to a statutory class.

Because the references cited by the Examiner do not teach, suggest or describe a system or method in which a number of opportunities to service a work request within a target time is calculated as claimed, essential elements required for a rejection of the claims have been omitted by the Office Action. Therefore, the rejections of the claims in view of the cited references should be reconsidered and withdrawn, and the claims allowed.

Applicants note that this is the third Notice of Appeal and Reasons Supporting Pre-Appeal Brief Request for Review filed in this application. Moreover, the claims have not been amended since an Amendment and Response was filed on August 10, 2007. Accordingly, Applicants respectfully request that the application be passed to allowance. Moreover, should the Examiner see fit to enter new rejections, Applicants respectfully request that such rejections be set forth in a non-final Action.

The pre-appeal brief conference participants are invited to contact the undersigned by telephone if there are any questions or if doing so would expedite the resolution of this matter.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: _____


Bradley M. Kepper

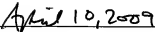
Registration No. 44,189

1560 Broadway, Suite 1200

Denver, Colorado 80202-5141

(303) 863-9700

Date: _____


April 10, 2009